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| EXAMINER | |
|---|---|
| MURDOUGH, JOSHUA A | |
| **ART UNIT** | **PAPER NUMBER** |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/719,981 | HUG ET AL. | |
| | Examiner | Art Unit | |
| | JOSHUA MURDOUGH | 3621 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on *24 November 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,2,4-16,18-20 and 22-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4-16, 18-20, and 22-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08/07/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Continued Examination Under 37 C.F.R. § 1.114*

1. A request for continued examination ("RCE") under 37 C.F.R. § 1.114, including the fee set forth in 37 C.F.R. § 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. § 1.114, and the fee set forth in 37 C.F.R. § 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 C.F.R. § 1.114. Applicant's submissions filed on 7 August 2009 and 24 November 2009 have been entered.

### *Acknowledgements*

2. This action is responsive to Applicants' above noted RCE and associated amendments received 7 August 2009 and 24 November 2009.

3. This action has been assigned paper number 20100308 for reference purposes only.

4. Claims 1, 2, 4-16, 18-20, and 22-31 are pending.

5. Claims 1, 2, 4-16, 18-20, and 22-31 have been examined.

### *Affidavit Under 37 C.F.R. §1.131*

6. The affidavits and evidence received 7 August 2009 under 37 C.F.R. 1.131 ("2009 Affidavits") have been considered but are ineffective to overcome the Medvinsky reference (US 2005/0022019) from the application filed on July 5, 2003 ("reference date").

7. In the 2009 Affidavits, Applicants state "[t]he subject matter claimed in the subject application was conceived prior to July 5, 2003" (2009 Affidavits, Point 7). Applicants also state

"[d]iligent pursuit of actual reduction to practice of the invention claimed in the subject application began prior to July 5, 2003, and continued, without lapse, through the subject application filing date of November 21, 2003" (2009 Affidavits, Point 38). Furthermore, Applicants state "Constructive reduction to practice of the claimed invention occurred on November 21, 2003, when the subject application was filed with the United States Patent and Trademark office" (2009 Affidavits, Point 52). Because Applicants state conception was prior to the reference date, and the reduction to practice was on November 21, 2003, the Examiner understands that Applicants are not alleging the actual reduction to practice occurred before the reference date (see MPEP § 715.07 III. (A). However Applicants statements that "diligent pursuit of ***actual*** reduction to practice" [emphasis added] began prior to the reference date and continued until the ***constructive*** reduction to practice, the Examiner does not understand whether Applicants are attempting to swear behind the reference as set forth in MPEP § 715.07 III. (B) or MPEP § 715.07 III. (C).

8. Additionally, Applicants state "[e]xhibits B through I show that employees of RealNetworks, Inc. ("RealNetworks") continued to work on implementing the claimed invention and other features which, although not directly claimed in the subject application, were required in order to implement the claimed invention" (2009 Affidavits, Point 39). The Examiner understands this to mean that exhibits B through I are intended to show diligence between July 5, 2003 and November 21, 2003. Relying on Applicants' statements for the dates of the respective exhibits (B-I) provides the following date corresponding to the Exhibits:

B. June 20, 2003 (2009 Affidavits, Point 43)

C. July 1, 2003 (2009 Affidavits, Point 44)

D. July 16, 2003 (2009 Affidavits, Point 45)

E. August 1, 2003 (2009 Affidavits, Point 46)

F. August 2, 2003 (2009 Affidavits, Point 47)

G. August 7, 2003 (2009 Affidavits, Point 48)

H. August 15, 2003 (2009 Affidavits, Point 49)

I. February 9, 2004 (2009 Affidavits, Point 50).

9. Because Exhibit C establishes diligence just prior (four days) to the reference date, Exhibit B is not needed to show diligence. Because Exhibit I is over 2 months after the constructive reduction to practice, it does not contribute to the showing of diligence.

10. Therefore, Exhibits C-H are considered to be evidence applicable to the showing of diligence. Applicants allege there was a diligent pursuit of the reduction to practice from July 5, 2003 through November 21, 2003, a period of about four and a half months. However, Exhibits C-H only provide evidence for the period of July 1, 2003 through August 15, 2003. Because there is no evidence to show that Applicants were diligent from August 16, 2003 through November 20, 2003, a period of over three months, the 2009 Affidavits and associated evidence are insufficient to show the diligent pursuit of reduction to practice.

11. In summary, Applicants have not clearly set forth whether they are intending to swear behind Medvinsky as described in MPEP § 715.07 III. (B) or MPEP § 715.07 III. (C). Additionally, Applicants are attempting to show diligence over a four and a half month period

but have only provided evidence of the diligence over a month and a half of the four and a half month period.

### *Claim Rejections - 35 USC § 112*

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claim 12 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Claim 12 recites the limitation "the content rights server" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no prior server let alone a content rights server recited in claim 12, or claim 1 from which claim 12 depends. Because there is no recited server, one of ordinary skill in the art would not understand where the data is being received from.

15. The Examiner finds that because claim 12 is rejected as being indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied as much as practically possible.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. Claims 1, 2, 4, 5, 10-16, 18-20, and 22-31 are rejected under 35 U.S.C. §102(e) as being anticipated by Medvinsky (2005/0022019).

18. As to claim 1, Medvinsky shows: In a client device, a method comprising:

a. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);

b. determining an allotted playback duration for the device (Figure 4, 304);

c. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

d. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

e. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).

19. As to claim 2, Medvinsky further shows:

f. the request for playback of digital audio or video content is received via a user input device (Paragraph 0030, set-top box which allows for user input).

20. As to claim 4, Medvinsky further shows:

g. playback of the requested digital audio or video content track is denied if it is determined that the relationship between the allotted playback duration and elapsed playback duration is satisfied (Figure 4, 305-307; where the "part" 307 is understood to be a track).

21. As to claim 5, Medvinsky further shows:

h. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the allotted playback duration (Figure 4, 305-307; decryption facilitates the playback).

22. As to claim 10, Medvinsky further shows:

i. denying playback of additional digital audio or video content stored on the device in addition to the requested digital audio or video content if it is determined that the

elapsed playback duration is equal to or exceeds the allotted playback duration (Figure 4, 306 & 314).

23. As to claim 11, Medvinsky further shows:

j. the allotted playback duration is determined based upon predetermined rights associated with the device (Paragraph 0038).

24. As to claim 12, Medvinsky further shows:

k. the allotted playback duration is determined based upon data received from the content rights server (Paragraph 0050).

25. As to claim 13, Medvinsky further shows:

l. periodically increasing the allotted playback duration prior to the allotted playback duration exceeding the elapsed playback duration (Paragraph 0042, As shown in the reference, the time is updated periodically with examples of 5 and 15 minutes given.).

26. As to claim 14, Medvinsky further shows:

m. the allotted playback duration is increased based upon entitlements granted to the user by a service provider (Figure 4, 310-312, Multiple plays are allowed by the provider, and the effective playback duration is extended for each play used.) .

27. As to claim 15, Medvinsky shows: In a digital content rendering device, a method comprising:

n. rendering one of a plurality of audio or video content items (Paragraph 0015);

o. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

p. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300).

28. As to claim 16, Medvinsky further shows:

q. the elapsed playback duration represents by an amount of time for which content has been rendered by the digital content rendering device (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit).

29. As to claim 18, Medvinsky further shows:

r. regulating comprises denying further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to the allotted playback duration (Figure 4, 314).

30. As to claim 19, Medvinsky further shows:

s. the allotted playback duration represents at least one of an amount of render time for which content may be rendered on the digital content rendering device, and a quantity of data that may be processed by the digital content rendering device to render content on the device (There is inherently a relationship between the playback duration and the quantity of data processed, known as bit rate, and therefore, the time of the playback represents the data processed.).

31. As to claim 20, Medvinsky further shows:

t. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the amount of render time corresponding to allotted playback right (Figure 4, 300).

32. As to claim 22, Medvinsky shows:

u. In a digital content rendering device, a method comprising:

v. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

w. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

x. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be

rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

33. As to claim 23, Medvinsky further shows:

y. the allotted measure of digital audio or video content that may be rendered represents an amount of time that the digital content rendering device may render the digital audio or video content (Paragraph 0014).

34. As to claim 24, Medvinsky further shows:

z. the playback right associated with the digital content rendering device is further associated with a user, (Paragraph 0014); and

aa. wherein the user is denied playback of any additional content items by the digital content rendering device once it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

35. As to claim 25, Medvinsky further shows:

bb. the playback right is determined based upon a subscription agreement between the user and a content provider (Paragraph 0041, A subscriber is mentioned, and in order to be a subscriber there has to be some agreement with the provider.).

36. As to claim 26, Medvinsky shows: A digital content rendering apparatus comprising:

cc. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to receive a request for playback of digital audio or video content stored on the apparatus (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.),

dd. determine an allotted playback duration for the apparatus (Figure 4, 304);

ee. determine an elapsed playback duration for the apparatus, the elapsed playback duration representing an amount of time previously consumed by the apparatus while rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

ff. determine whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is satisfied (Figure 4, 306);

gg. regulate playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the apparatus is determined to be satisfied (Figure 4, 300); and

hh. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

37. As to claim 27, Medvinsky shows: A digital content rendering apparatus comprising:

ii. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the apparatus to render one of a plurality of audio or video content items (Paragraph 0015);

jj. determine an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

kk. regulate further content rendering by the digital content rendering apparatus if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration; and at least one processor coupled with the storage medium to execute the programming instructions (Figure 4, 300).

38. As to claim 28, Medvinsky shows: A digital content rendering apparatus comprising:

ll. a storage medium (Paragraph 0068) having stored therein programming instructions designed to enable the digital content rendering apparatus to identify a playback right associated with the digital content rendering apparatus representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering apparatus (Figure 4, 304);

mm. determine whether the allotted measure of content has been rendered by the apparatus,(Figure 4, 306);

nn. prevent further content rendering on the digital content rendering apparatus if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering apparatus has previously been rendered by the apparatus (Figure 4, 300); and

oo. at least one processor coupled with the storage medium to execute the programming instructions (Paragraphs 0068-0069).

39. As to claim 29, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

pp. receiving a request for playback of digital audio or video content stored on the device (Figure 4, 305 & Paragraph 0054; the decryption is an integral part of the presentation process and is done just prior to playing and therefore the request is for the content not the decryption in the eyes of the user.);

qq. determining an allotted playback duration for the device (Figure 4, 304);

rr. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit);

ss. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (Figure 4, 306); and

tt. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (Figure 4, 300).

40. As to claim 30, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

uu. rendering one of a plurality of audio or video content items (Paragraph 0015);

vv. determining an elapsed playback duration for which digital audio or video content has been rendered (inherent to Figure 4, 306, the "play time" or playback duration has to be determined to compare it to the playback time limit); and

ww. regulating further content rendering by the digital content rendering device if the elapsed playback duration satisfies a predetermined relationship with respect to an allotted playback duration (Figure 4, 300) .

41. As to claim 31, Medvinsky shows: A machine readable medium (Paragraph 0068) having stored thereon machine executable instructions, the execution of which to implement a method comprising:

xx. identifying a playback right associated with the digital content rendering device representing an allotted measure of digital audio or video content that may be rendered by the digital content rendering device (Figure 4, 304);

yy. determining whether the allotted measure of content has been rendered by the device (Figure 4, 306); and

zz. preventing further content rendering on the digital content rendering device if it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Figure 4, 300).

***Claim Rejections - 35 USC §103***

42. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

43. Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Belknap (5,586,264).

44. As to claims 6 and 7, Medvinsky shows as discussed above.

45. Medvinsky does not directly disclose the displaying of control values to the user.

46. Belknap teaches the elapsed playback duration (Column 20, lines 6-7) and the allotted playback duration (Column 20, line 15) being shown to the user. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include the displaying of this information for the purpose of allowing the user to make informed decisions during the playback in regards to the use of the remainder of the allotted time.

47. As to claim 8, Medvinsky further shows:

aaa. the digital audio or video content is encoded in accordance with at least one of an advanced audio encoding algorithm, an adaptive multi-rate encoding algorithm and an MP3 encoding algorithm (Paragraph 0012, MPEG-4 is and adaptive multi-rate encoding algorithm.).

48. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky in view of Blonder (5,708,422).

49. Medvinsky discloses as discussed above.

50. Medvinsky does not disclose:

bbb. denying playback of the requested digital audio or video content if the elapsed playback duration added to a run length associated with the requested content exceeds the allotted playback duration.

51. Blonder teaches a credit account where an additional charge is not allowed if it would cause the account to go over its limit (Column 12, lines 18-21). There is a strong correlation to the instant application. The time is paid for and creates a limit. As the time is used, the balance increases until it reaches the limit. Any transactions, additional viewing, that would cause the balance, elapsed time, to exceed the limit, allowed time, are therefore denied. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky to include a transaction system as described by Blonder in order to prevent the usage of contents beyond the rights issued, which corresponds to not exceeding the limit (Blonder, Column 12, lines 18-21).

***Alternate Rejections***

52. Because MPEP § 706.02 I. states rejections that seem likely to be antedated by a 37 C.F.R. 1.131 affidavit or declaration should be backed up by "the best other art rejections available," the Examiner has provided these rejections to back up the rejections set forth above.

***Claim Rejections - 35 USC §103***

53. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

54. Claims 1, 2, 4, 5, 10-13, 15, 16, 18-20, 22-24, and 26-31 rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky (US 2004/0139312) ("Medvinsky2") in view of Official Notice.

55. As to claims 1, 15, 16, 22, 23, and 26-31, Medvinsky2 shows: In a client device, a method comprising:

ccc. receiving a request for playback of digital audio or video content stored on the device (device A provides requested content to device B therefore device B had to request the content and device A had to receive the request [0061]);

ddd. determining an allotted playback duration for the device (The device is allotted playback times according to its security level [0031]);

eee. determining an elapsed playback duration for the device, the elapsed playback duration representing an amount of time previously consumed by the device while rendering digital audio or video content (inherent to [0031], the duration is measured in number of times the playback has been performed);

fff. determining whether a predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is satisfied (if the number of playbacks is less than the allowed number [0031]); and

ggg. regulating playback of at least the requested digital audio or video content if the predetermined relationship between the elapsed playback duration and the allotted playback duration for the device is determined to be satisfied (allows content to be played if the playbacks are less than the number set forth in the license [0031]).

56. Medvinsky2 does not expressly show that the elapsed and allotted playback durations are in time increments (hh:mm:ss).

57. However, the Examiner takes Official Notice that it is notoriously old and well known in the art that a playback of a piece of content corresponds to a period of time, because the length of a piece of content is finite each playback of the content corresponds to that finite period of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky2 to replace the number of playbacks with the time duration of a playback times the number of playbacks because one of ordinary skill in the art would recognize these values as representing the same amount of playback.

58. As to claim 2, Medvinsky2 further shows:

hhh. the request for playback of digital audio or video content is received via a user input device ("device B" [0061]).

59. As to claim 4 and 18, Medvinsky2 further shows:

iii. playback of the requested digital audio or video content track is denied if it is determined that the relationship between the allotted playback duration and elapsed playback duration is satisfied (playback is allowed a number of times, therefore, after that number of times, it is denied [0031]).

60. As to claims 5 and 20, Medvinsky2 further shows:

jjj. facilitating playback of the digital audio content if it is determined that the elapsed playback duration does not exceed the allotted playback duration (playback is allowed on the device [0031]).

61. As to claim 10, Medvinsky2 further shows:

kkk. denying playback of additional digital audio or video content stored on the device in addition to the requested digital audio or video content if it is determined that the elapsed playback duration is equal to or exceeds the allotted playback duration (Each piece of content is given a playback duration on the device, if the duration has been met, no further playback is allowed for that piece. [0031]).

62. As to claim 11, Medvinsky2 further shows:

lll. the allotted playback duration is determined based upon predetermined rights associated with the device (The amount of times is determined when the content and license are transferred to the device and are particular to the device. [0031]).

63. As to claim 12, Medvinsky2 further shows:

mmm. the allotted playback duration is determined based upon data received from the content rights server **156** (received first at 150, Figure 2).

64. As to claim 14, Medvinsky further shows:

nnn. the allotted playback duration is increased (from not allowed to allowed immediately, [0036]) based upon entitlements granted to the user by a service provider (Device 1 is providing the content for the presentation and upon verifying the certificate, allows playback according to the access rights [0036] and Figure 4) .

65. As to claim 19, Medvinsky further shows:

ooo. the allotted playback duration represents at least one of an amount of render time for which content may be rendered on the digital content rendering device, and a quantity of data that may be processed by the digital content rendering device to render content on the device (There is inherently a relationship between the playback duration and the quantity of data processed, known as bit rate, and therefore, the time of the playback represents the data processed.).

66. As to claim 24, Medvinsky further shows:

ppp. the playback right associated with the digital content rendering device is further associated with a user, (devices operated by a user form an authorized domain shown as **180,** Figure 2); and

qqq. wherein the user is denied playback of any additional content items by the digital content rendering device once it is determined that the allotted measure of digital audio or video content that may be rendered by the digital content rendering device has previously been rendered by the device (Each piece of content is given a playback duration on the device, if the duration has been met, no further playback is allowed for that piece. [0031]).

67. Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky2 and Official Notice in view of Belknap (5,586,264).

68. As to claims 6 and 7, Medvinsky2 and Official Notice show as discussed above.

69. Medvinsky2 does not directly disclose the displaying of control values to the user.

70. Belknap teaches the elapsed playback duration (Column 20, lines 6-7) and the allotted playback duration (Column 20, line 15) being shown to the user. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky2 to include the displaying of this information for the purpose of allowing the user to make informed decisions during the playback in regards to the use of the remainder of the allotted time.

71. As to claim 8, Medvinsky2 further shows:

rrr. the digital audio or video content is encoded in accordance with at least one of an advanced audio encoding algorithm, an adaptive multi-rate encoding algorithm and an

MP3 encoding algorithm (Paragraph 0012, MPEG-4 is an adaptive multi-rate encoding algorithm.).

72. Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Medvinsky2 and Official Notice in view of Blonder (5,708,422).

73. Medvinsky2 and Official Notice disclose as discussed above.

74. Medvinsky2 does not disclose:

sss. denying playback of the requested digital audio or video content if the elapsed playback duration added to a run length associated with the requested content exceeds the allotted playback duration.

75. Blonder teaches a credit account where an additional charge is not allowed if it would cause the account to go over its limit (Column 12, lines 18-21). There is a strong correlation to the instant application. The time is paid for and creates a limit. As the time is used, the balance increases until it reaches the limit. Any transactions, additional viewing, that would cause the balance, elapsed time, to exceed the limit, allowed time, are therefore denied. It therefore would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Medvinsky2 to include a transaction system as described by Blonder in order to prevent the usage of contents beyond the rights issued, which corresponds to not exceeding the limit (Blonder, Column 12, lines 18-21).

76. Claims 13 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medvinsky2 and Official Notice in view of Swanson (US 2002/0013784).

77. Medvinsky2 and Official Notice teach as set forth above in regards to claims 1 and 24.

78. Medvinsky2 does not expressly show:

ttt. periodically increasing the allotted playback duration prior to the allotted playback duration exceeding the elapsed playback duration; and

uuu. the playback right is determined based upon a subscription agreement between the user and a content provider.

79. However, Swanson shows the allocation of monthly credits based on a subscription [0068]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the teachings of Medvinsky2 to increase the allotted playback monthly based on a subscription system similar to that of Swanson in order to create a recurring income source for the content provider and to allow the user to enjoy content month after month instead of a limited number of times.

***Response to Arguments***

80. Applicant's arguments filed 7 August 2009 have been fully considered but they are not persuasive.

81. Applicants argue:

82. "As shown, the claims are directed toward allotted and elapsed playback durations associated with 'the device'" (Remarks, Page 12).

83. Examiner's response:

84. The Examiner agrees that the durations are ***associated*** with the device. Medvinsky provides playbacks allowed on a per device basis which are allocated upon transferring the content and the license to the device [0031]. Therefore, the rights in Medvinsky are "for the device" as claimed. If Applicants intend to claim a total playback duration for all content stored on the device, they are encouraged to expressly recite that the durations are for all content combined.

85. Applicants argue:

86. "Applicants have included two affidavits under 37 C.F.R. § 1.131 (the "131 affidavits") with this response. Applicants contend that the affidavits evidence the fact that Applicants invented the claimed subject matter prior to the date of the Medvinsky reference. The 131 affidavits show conception of the claimed subject matter prior to the Medvinsky reference, and also show that Applicants' diligent pursuit of reduction to practice of the claimed subject began before the Medvinsky reference was filed and continued at least until the subject application was filed" (Remarks, Page 14, Paragraph 3).

87. Examiner's response:

88. As noted above, Applicants' Affidavits only establish evidence of diligence for the period of July 1, 2003 until August 15, 2003. Applicants have not set forth any evidence of diligence for the three month period from August 16, 2003 through November 20, 2003. Because Applicants have only submitted evidence that they were diligent for approximately one third of

the period they are trying to swear back for, the 2009 Affidavits are ineffective for establishing the earlier priority date.

89. Applicants argue:

90. "The Examiner adopted definitions for various terms in the subject application's specification and claims. Office Action at pp. 17-18. The Applicants respectfully object to and disagree with some or all of the Examiner's adopted definitions and reserve the right to suggest, argue, and/or adopt alternate definitions of the terms defined by the Examiner" (Remarks, Page 17, Paragraph 3).

91. Examiner's response:

92. The Examiner notes that Applicants have not pointed to any supposed errors with the definitions provided. Applicants have not indicated which definitions they object to and disagree with. Applicants are respectfully reminded of their duty to point out any supposed errors under 37 C.F.R. § 1.111(b).

93. As stated by the Examiner and noted by Applicants, the cited definitions are to support the Examiner's position under the broadest reasonable interpretation. Unless the definition is from the instant specification, which none of the cited definitions are, the Examiner does not consider the definition limiting. However, the Examiner makes no statement in regards to the interpretation of issued claims.

***Conclusion***

94. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The Examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

95. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

96. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Joshua Murdough
Examiner, Art Unit 3621

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621